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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte JOHN H. ZYBURA, MAX L. BENSON, HERMAN MAN,
EDWARD H. WAYT, FELIX W. WONG, and JING WU

———————————

Appeal 2008-2195
Application 10/669,866[1]
Technology Center 2100

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Decided:[2] February 3, 2009

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Before JEAN R. HOMERE, JAY P. LUCAS, and STEPHEN C. SIU,
Administrative Patent Judges.

HOMERE, *Administrative Patent Judge.*

DECISION ON APPEAL

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[1] Filed on September 24, 2003. The real party in interest is Microsoft Corp.
[2] The two-month time period for filing an appeal or commencing a civil
action, as recited in 37 CFR § 1.304, begins to run from the decided date
shown on this page of the decision. The time period does not run from the
Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1 through 33. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

Appellants' Invention

Appellants invented a method for synchronizing entities between a master namespace and a slave namespace that suffer from a name collision. (Spec. 16.) As depicted in Figure 5, a first entity (510) and a second entity (511) in the master namespace (150) are sequentially renamed from a first state (501) to a second and third states (502, 503), respectively. (*Id.*) The entity changes in the master namespace (150) are transmitted out of order to corresponding entities (530, 531) in the slave namespace (221) to thereby prevent the two namespaces from having conflicting entity names during synchronization. (*Id.* at 16-17.)

Illustrative Claims

Independent claims 1 and 21 further illustrate the invention. They read as follows:

1. A method for synchronizing information in namespaces, comprising:

receiving an indication of a change to information in a first namespace;

based on the indication, determining if an entity exists in a second namespace related to the information;

if so, determining if the entity has a characteristic that conflicts with the information; and

if a conflict exists, modifying the entity to resolve the conflict prior to applying the change to the second namespace.

21. A technique for synchronizing entities within two namespaces, comprising:

while synchronizing the two namespaces:

identifying a conflict between a change notification received from a first namespace and a state of information within a second namespace;

creating a temporary entity within the second namespace that allows the synchronization to proceed without interference by the conflict; and

if the conflict becomes resolved such that the temporary entity is no longer necessary, removing the temporary entity.

Prior Art Relied Upon

The Examiner relies on the following prior art as evidence of unpatentability:

Thatcher	6,061,743	May 9, 2000
Karamanolis	2003/0131104 A1	Jul. 10, 2003
Eick	6,154,212	Nov. 28, 2000

Rejection on Appeal

The Examiner rejects the claims on appeal as follows:

1. Claims 1, 13, 21, 24, and 25 stand provisionally rejected as being unpatentable under the doctrine of obviousness-type double patenting over claims 1, 13, 22, and 26 in co-pending application No. 10/671,408.

2. Claims 1 through 33 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

3. Claims 1 through 15, 20 through 23, and 25 through 31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Thatcher and Karamanolis.

4. Claims 16 through 19, 32 and 33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Thatcher, Karamanolis, and Eick.

5. Claim 24 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Thatcher and Eick.

A.   DOUBLE PATENTING REJECTION

Appellants request that the provisional obviousness-type double patenting rejection of claims 1, 13, 21, 24, and 25 be held in abeyance until a notice of allowance is received in one of the applications. (App. Br. 7, Reply Br. 2.) In response, the Examiner maintains the rejection. (Ans. 10-12.) We deny Appellants' request to hold the rejection in abeyance. Since we do not have in the record before us any other response from Appellants to rebut the

Examiner's prima facie case of obviousness-type double patenting, we pro

forma affirm the rejection.

B. NON-STATUTORY SUBJECT MATTER REJECTION

Claims 1-23

Appellants argue that claims 1 through 23 are directed to statutory

subject matter under the useful, concrete and tangible result test provided in

AT&T Corp. v. Excel Communications, Inc. (App. Br. 10-14.) In response,

the Examiner submits that the cited claims are directed to an abstract idea.

Therefore, they are not directed to statutory subject matter under the cited

test. (Ans. 4-7.)

Issue 1

The first threshold issue before us is whether Appellants have shown

that the Examiner erred in finding that method claims 1 through 23 are

directed to non-statutory subject matter under the machine-or-transformation

test? We answer this inquiry in the negative.

Principles of Law regarding issue 1

The Court of Appeals for the Federal Circuit has recently clarified the

law regarding patent eligible subject matter for process claims. *In re Bilski,*

545 F.3d 943 (Fed. Cir. 2008) (en banc). The en banc court in *Bilski* held

that "the machine-or-transformation test, properly applied, is the governing

test for determining patent eligibility of a process under § 101." *Id.* at 956.

The court in *Bilski* further held that "the 'useful, concrete and tangible result' inquiry is inadequate [to determine whether a claim is patent-eligible under § 101.]" *Id.* at 960. The court explained the machine-or-transformation test as follows:

> The machine-or-transformation test is a two-branched inquiry; an applicant may show that a process claim satisfies § 101 either by showing that his claim is tied to a particular machine, or by showing that his claim transforms an article. *See Benson,* 409 U.S. at 70, 93 S. Ct. 253. Certain considerations are applicable to analysis under either branch. First, as illustrated by *Benson* and discussed below, the use of a specific machine or transformation of an article must impose meaningful limits on the claim's scope to impart patent-eligibility. *See Benson,* 409 U.S. at 71-72, 93 S. Ct. 253. Second, the involvement of the machine or transformation in the claimed process must not merely be insignificant extra-solution activity. *See Flook,* 437 U.S. at 590, 98 S. Ct. 2522.

Id. at 961-62.

The court declined to decide under the machine implementation branch of the inquiry whether or when recitation of a computer suffices to tie a process claim to a particular machine. As to the transformation branch of the inquiry, however, the court explained that transformation of a particular article into a different state or thing "must be central to the purpose of the claimed process." *Id.* at 962. As to the meaning of "article," the court explained that chemical or physical transformation of physical objects or substances is patent-eligible under § 101. *Id.* The court also explained that transformation of data is sufficient to render a process patent-eligible if the data represents physical and tangible objects, i.e., transformation of such raw

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data into a particular visual depiction of a physical object on a display. *Id.* at
963. The court further noted that transformation of data is insufficient to
render a process patent-eligible if the data does not specify any particular
type or nature of data and does not specify how or where the data was
obtained or what the data represented. *Id.* at 962 (citing *In re Abele,* 684
F.2d 902, 909 (CCPA 1982) (process claim of graphically displaying
variances of data from average values is not patent-eligible) and *In re Meyer,*
688 F.2d 789, 792-93 (CCPA 1982) (process claim involving undefined
"complex system" and indeterminate "factors" drawn from unspecified
"testing" is not patent- eligible)).

Analysis regarding issue 1

Independent claim 1 recites in its preamble a method for
synchronizing information in namespaces. The body of the claim merely
recites that upon receiving notification of a change, determining if it
conflicts with an entity in a second namespace, and if so, modifying the
entity to resolve the conflict prior to updating the second namespace. We
note that the recited method is not tied to a particular machine. Next, while it
can be argued that the modification of the entity transforms the entity into a
different state, we find that the entity being transformed is not a physical
object. Similarly, while it can be argued that the application of the change to
a second namespace transforms the namespace into a different state, we find
that the namespace being transformed is not a physical object. Thus, under

the machine-or-transformation test, we find that the claimed method fails to recite a particular machine or an article being transformed into a different state or thing. Therefore, it fails to be directed to statutory subject matter under the machine-or-transformation test.

Similarly, independent claim 13 recites a method that is not tied to a particular machine for synchronizing the namespaces. Further, while the recited method transforms an entity by creating a representation therefor, the entity being transformed is not an article. Therefore, it fails to be directed to statutory subject matter under the machine-or-transformation test.

As to independent claim 21, while its preamble recites a technique for synchronizing the namespaces, the body of the claim merely lists a series of steps for accomplishing the technique. Since, the recited technique is neither an apparatus, nor a composition of matter, nor an article of manufacture, we construe it as being a process. However, we note that the recited process is not tied to a particular machine. Further, it does not recite an article which is being transformed into a different state or thing. Therefore, the claimed process fails be directed to statutory subject matter under the machine-or-transformation test.

Appellants' arguments that the claims are directed to statutory subject matter under the useful, concrete, and tangible result test are moot since the CAFC has cautioned us against using such a test in evaluating method claims for patent eligibility. *Bilski*, 545 F.3d at 959-60. It follows that

Appellants have failed to show that the Examiner erred in finding claims 1, 13, and 21 unpatentable as being directed to non-statutory subject matter.

Appellants have not separately argued claims 2 through 12, 14 through 20, 22, and 23. Consequently, these claims fall together with claims 1, 13, and 21. 37 C.F.R. § 41.37(c)(1)(vii).

Claims 24 through 33

Appellants argue that claims 24 through 33 are directed to statutory subject matter since the computer-readable medium recited therein is encoded with data structure to thereby define a structural and functional relationship between the medium and the data (App. Br. 14-17.) In response, the Examiner submits that the cited claims recite a storage medium that encompasses a carrier wave or signal. Therefore, they are not directed to statutory subject matter. (Ans. 32-34.)

Issue 2

The second threshold issue before us is whether Appellants have shown that the Examiner erred in finding that method claims 24 through 33 are directed to non-statutory subject matter? We answer this inquiry in the negative, Appellants have not shown Examiner error.

Principles of Law regarding issue 2

Our reviewing court has recently held that transitory, propagating signals such as carrier waves are not within any of the four statutory

categories (process, machine, manufacture or composition of matter.)
Therefore, a claim directed to computer instructions embodied in a signal is
not statutory under 35 U.S.C. § 101. *In re Nuijten*, 500 F.3d 1346, 1357
(Fed. Cir. 2007.)

Findings of fact regarding issue 2

The following findings of fact (FF) are supported by a preponderance
of the evidence.

1.   Appellants' Specification defines computer readable medium to
include modulated data signals such as carrier waves, and wireless media
such as acoustic, RF, infrared. (Spec. 21-22.)

Analysis regarding issue 2

Independent claim 24 recites a data structure encoded in a computer
readable medium. Similarly, claim 25 recites a computer readable medium
having computer executable components for synchronizing entities in
namespaces. As detailed above, Appellants' Specification defines the
computer readable medium to include a carrier wave and signal bearing
media such as wireless transmission media. (FF. 1.) We thus find that the
cited claims encompass the use of carrier waves to embody a machine
executable program or data structure. Because carrier waves and signals are
transitory, the embodiment of data structure or machine executable program
as a carrier wave is also transitory, and is similarly not statutory. It follows

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that Appellants have not shown that the Examiner erred in rejecting claims
24 and 25 as being directed to non-statutory subject matter.

Appellants have not separately argued claims 26 through 33.
Consequently, these claims fall together with claims 24 and 25. 37 C.F.R.
§ 41.37(c)(1)(vii).

C.   OBVIOUSNESS REJECTIONS

Independent claim 1 recites in relevant part upon determining that an
entity in a first namespace has a characteristic that conflicts with a change to
information, modifying the entity to resolve the conflict prior to applying the
change to a second namespace.

Issue regarding obviousness rejection

Appellants argue that there is insufficient rationale to properly
combine the disclosures Thatcher and Karamanolis to teach the cited
limitations. (App. Br. 19-23, Reply Br. 4.) In response, the Examiner
submits that modifying Thatcher's namespace integration system by
incorporating therein Karamanolis' disclosure of resolving conflicts between
linked and unlinked operations within a same namespace would have
reduced communication overhead in Thatcher's system. (Ans. 15-16, and
36-37.) Therefore, the first threshold issue before us is whether Appellants
have shown that the Examiner erred in concluding that one of ordinary skill
would have found sufficient rationale to properly combine the disclosures of

Thatcher and Karamanolis to teach the cited limitations. We answer this inquiry in the negative.

Findings of fact regarding obviousness rejections

The following findings of fact (FF) are supported by a preponderance of the evidence.

Thatcher

1a.   Thatcher discloses a generic user interface for integrating disparate entities between a host namespace and a foreign namespace. (Col. 2, ll. 13-15.)

1b.   As shown in Figure 2, each namespace includes a plurality of partitions of objects hierarchically arranged and replicated at different nodes of the tree. (Col. 5, ll. 30-33.)

1c.   Each replica of a partition holds the same set of objects, and a unique name designating the new path associated therewith. (Col. 5, ll. 46-63.)

1d.   When one replica is updated, the change is propagated to other replicas over time. These delayed updates result in a temporary inconsistency between the states of objects in the replicas. Once the update ceases, the replicas converge to identical values. (Col. 6, ll. 44-54, ll. 62-67.)

1e.   In the event of competing updates, the replication system utilizes time stamps to determine the sequence of the updates. (Col. 6, ll. 54-61.)

1f.   If a replica fails to update in a round of the synchronization, it is rescheduled to be updated in a later synchronization round. (Col. 7, ll. 1-6.)

1g.   As shown in Figure 3, the host namespace (51) and the foreign namespace (54), each uses an interface module (52, 55) to register their respective objects with a common registry (58). (Col. 5, ll. 13-21.)

1h.   The registry (58) includes an extension table that creates an association between the host and foreign namespaces. Particularly, the created association enables a user viewing objects in the host namespace to also view associated objects in the foreign namespace. (Col. 8, ll. 45-58.)

1i.   Thatcher discloses certain invisible attribute values referred to as obituaries. They keep track of information pending transfer of update information from one namespace to another. They are synchronized and replicated across the namespaces in the same manner as do updates. (Col. 7, ll. 6-12.)

Karamanolis

2a.   As shown in Figure 1, Karamanolis discloses a plurality of partition servers (102-1-102-*n*) in a namespace management system (100) for controlling access to objects (104, 106) in the hierarchically structured partitions (108, 110). (p. 2, ¶ [0027].)

2b.   As shown in Figure 2, namespace objects (152, 154) utilize forward pointers (160, 162) to reference a target object (156). In turn, the target object (156) utilizes back pointers (164, 166) to maintain consistency

in the namespace in the event of a resulting conflict. (p. 2, ¶¶ [0030]-[0031].)

      2c.   Karamanolis discloses imposing a certain order to the namespace operations to thereby reduce all possible inconsistencies in the namespace to instances of orphan objects. (p.2, ¶ [0035].)

      2d.   In the link operation, upon modifying the target object, the namespace object corresponding thereto is updated to point to the target object. (p. 3, ¶ [0044].)

Principles of law regarding obviouness rejections

      Appellants have the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) ("On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.") (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

> Section 103 forbids issuance of a patent when "the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains."

KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727, 1734 (2007).

In *KSR*, the Supreme Court emphasized "the need for caution in granting a patent based on the combination of elements found in the prior art," and discussed circumstances in which a patent might be determined to be obvious. *KSR,* 127 S. Ct. at 1739 (citing *Graham v. John Deere Co.*, 383 U.S. 1, 12 (1966)). The Court reaffirmed principles based on its precedent that "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *Id.* The operative question in this "functional approach" is thus "whether the improvement is more than the predictable use of prior art elements according to their established functions." *Id.* at 1740.

The Federal Circuit recently recognized that "[a]n obviousness determination is not the result of a rigid formula disassociated from the consideration of the facts of a case. Indeed, the common sense of those skilled in the art demonstrates why some combinations would have been obvious where others would not." *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1161 (Fed. Cir. 2007) (citing *KSR*, 127 S. Ct. at 1739). The Federal Circuit relied in part on the fact that Leapfrog had presented no evidence that the inclusion of a reader in the combined device was "uniquely challenging or difficult for one of ordinary skill in the art" or "represented an unobvious step over the prior art." *Id.* at 1162 (citing *KSR*, 127 S. Ct. at 1741).

One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. *See In re Kahn*, 441 F.3d at 987-88; *In re Young*, 927 F.2d 588, 591 (Fed. Cir. 1991); and *In re Keller*, 642 F.2d 413, 425 (CCPA 1981). Moreover, in evaluating such references it is proper to take into account not only the specific teachings of the references but also the inferences which one skilled in the art would reasonably be expected to draw therefrom. *In re Preda*, 401 F.2d 825, 826 (CCPA 1968).

Analysis regarding Obviousness Rejections

Claims 1-12

As set forth in the Findings of Facts section, Thatcher discloses that upon updating a replica in a namespace, delays in updating other replicas sometimes result in inconsistency among the replicas. (FF. 1d.) We find that the ordinarily skilled artisan would have readily recognized that Thatcher's disclosure of inconsistencies that arise between the replicas of a namespace due to the propagation delay in the updates teaches or suggests the claimed determination that modification to a namespace results in conflicting information between the replicas. Similarly, we find that Thatcher's disclosure of all the replicas having identical objects at the end of the update

(*id.*) teaches the claimed removal of the identified conflict before the update

takes place in the second namespace. Additionally, we find that

Karamanolis' teaching of using back pointers to maintain consistency

between a target object and a source object thereby resolving any possible

conflicts that might arise between them (FF. 2b) further reinforces

Thatcher's conflict resolution scheme in order to preserve consistencies

between the replicas. While the Examiner improperly relies on

Karamanolis' disclosure of resolving conflicts between linked and unlinked

operations, we find nonetheless that the suggested combination of the cited

references is proper. Particularly, the ordinarily skilled artisan would have

found that Thatcher and Karamanolis disclose prior art elements that

perform their ordinary functions to predictably result in a namespace

synchronization system that resolves a conflict between a modified entity in

a host namespace and a corresponding entity in a foreign namespace prior to

updating the entity in the foreign namespace. It follows that Appellants have

not shown that the Examiner erred in concluding that the combination

Thatcher and Karamanolis renders independent claim 1 unpatentable.

Appellants did not provide separate arguments with respect to the

rejections of claims 2 through 12. Consequently, these claims fall together

with representative claim 1. 37 C.F.R. § 41.37(c)(1)(vii).

Claims 13-15 and 20

Independent claim 13 recites in relevant part upon determining that an entity relating to changing information in a first namespace does not exist in a second namespace, creating a representation of the entity in the second namespace.

Appellants argue that there is insufficient rationale to properly combine the disclosures Thatcher and Karamanolis to teach the cited limitations. (App. Br. 24-25.) We do not agree. We find that the ordinarily skilled artisan would have readily appreciated that Thatcher, by disclosing at the end of an update all replicas converge to identical values (FF. 1d), teaches that at the end of the update replicated objects in both the host namespace and the foreign namespace will be identical. That implies, if an object is updated in the host namespace, it will have to be created in the foreign namespace, if it does not exist there, such that at the end of the update the replicated object can be identical in both namespaces. It follows that Appellants have not shown that the Examiner erred in concluding that the combination Thatcher and Karamanolis renders independent claim 13 unpatentable.

Appellants did not provide separate arguments with respect to the rejections of claims 13 through 15 and 20. Consequently, these claims fall together with representative claim 13. 37 C.F.R. § 41.37(c)(1)(vii).

Claims 21-23

Independent claim 21 recites in relevant part (1) creating a temporary entity within a second namespace that allows the synchronization to proceed without interference by a conflict identified between a change notification received from a first namespace and an entity in a second namespace, and (2) if the resolution of the conflict renders the temporary entity no longer necessary, removing the temporary entity.

Appellants argue that the disclosures of Thatcher and Karamanolis are not properly combined to teach or suggest the cited limitations. (App. Br. 26-28, Reply Br. 4-5.) In response, the Examiner finds that Thatcher's disclosure of rescheduling failed updates in a later synchronization cycle along with Karamanolis' conflict resolution scheme teaches the cited limitations. (Ans. 18-21.) We do not agree with the Examiner.

In our discussion of claim 1 above, we found that the combination of Thatcher and Karamanolis teaches resolving a conflict between a change to an entity in a host namespace and a foreign namespace prior to updating the entity in the foreign namespace. Further, in our discussion of claim 11, we found that the cited combination also teaches or suggests creating an entity in the second namespace to preserve consistency between the host namespace and the foreign namespace at the end of the update process. While the suggested combination teaches such resolution of conflict prior to updating an entity, as well as the creation of a missing entity, it does not teach or suggest the creation of a temporary entity that is removed upon

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safely resolving the conflict and temporary entity becomes unnecessary. It follows that Appellants have shown that the Examiner erred in concluding that the combination Thatcher and Karamanolis renders independent claim 21 unpatentable. For these foregoing reasons, we will not sustain the Examiner's rejection of claims 21 through 23.

Claims 25-31

Independent claim 25 recites in relevant part a placeholder component being operative to avoid dangling references. Appellants argue that there is insufficient rationale to properly combine the disclosures Thatcher and Karamanolis to teach the cited limitation. (App. Br. 29-31.) We do not agree. Appellants do not dispute that Thatcher's use of JAVA teaches the elimination of the dangling references problem, as proffered by the Examiner. (*Id.* at 30.) We find that Thatcher's disclosure of a common registry for storing registered objects of the host namespace and the foreign namespace teaches the claimed placeholder for avoiding dangling references. (FF. 1h.) The ordinarily skilled artisan would have appreciated that pointers associated with registered objects in the registry would not be dangling even after the objects associated therewith are deleted since they would remain sheltered in the registry for later use. It follows that Appellants have not shown that the Examiner erred in concluding that the combination of Thatcher and Karamanolis renders claim 25 unpatentable.

Appellants did not provide separate arguments with respect to the rejections of claims 26 through 31. Consequently, these claims fall together with representative claim 25. 37 C.F.R. § 41.37(c)(1)(vii).

Claims 16-19 and 32-33

Claim 16 recites that the representation of an entity includes a phantom entity in the second namespace. Appellants argue that the combination of Thatcher, Karamanolis, and Eick does not teach the cited limitation. (App. Br. 32.) We do not agree. As detailed in the Findings of Facts section above, Thatcher discloses obituaries as invisible attributes that keep track of updates during the synchronization of the host namespace and the foreign namespace. (FF. 1i.) We find that Thatcher's disclosure of the obituaries teaches the claimed phantom entities. Particularly, the ordinarily skilled artisan would have readily appreciated that these invisible attributes, like the phantom entities, create in a second namespace to be updated invisible entries reflecting changes tracked in a first namespace thereby maintaining consistency between the namespaces. It follows that Appellants have not shown that the Examiner erred in concluding that the combination of Thatcher, Karamanolis, and Eick renders claim 16 unpatentable.

Regarding claims 17 through 19, 32, and 33, Appellants reiterate the same arguments as those presented for claim 16. We have already addressed these arguments in our discussion of claim 16 above, and we do not agree with Appellants. Consequently, these claims fall together with

representative claim 16 for the reasons set forth above. 37 C.F.R.
§ 41.37(c)(1)(vii).

Claim 24

Independent claim 24 recites in relevant part a third field having a
phantom property for distinguishing between the first state and the second
state of the entity. Appellants argue that there is insufficient rationale to
properly combine the disclosures of Thatcher and Eick to teach the cited
limitation. (App. Br. 34-37.) We do not agree. As discussed above,
Thatcher's obituary attributes have the claimed phantom properties. Further,
we find that the obituary attributes, by keeping track of the entity updates,
teach the claimed distinction between the different states of the entity. It
follows that Appellants have not shown that the Examiner erred in
concluding that the combination of Thatcher and Eick renders claim 24
unpatentable.

CONCLUSIONS OF LAW

A.   Appellants have not shown that the Examiner erred in finding or
concluding that:

1.   Claims 1, 13, 21, 24, and 25 are unpatentable under the doctrine
of obviousness-type double patenting over claims 1, 13, 22, and 26 in co-
pending application No. 10/671,408.

2.   Claims 1 through 33 unpatentable under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

3.   Claims 1 through 15, 20 through 23, and 25 through 31 are unpatentable over the combination of Thatcher and Karamanolis under 35 U.S.C. § 103(a).

4.   Claims 16 through 19, 32 and 33 are unpatentable over the combination of Thatcher, Karamanolis, and Eick under 35 U.S.C. § 103(a).

5.   Claim 24 is as being unpatentable over the combination of Thatcher and Eick under 35 U.S.C. § 103(a).

B.   We affirm these rejections.

C.   Appellants have shown that the Examiner erred in concluding that the combination of Thatcher and Karamanolis renders claims 21 through 23 unpatentable under 35 U.S.C. § 103(a).

D.   We reverse this rejection.

VII.   DECISION

Because we have affirmed at least one ground of rejection with respect to each claim on appeal, the Examiner's decision is affirmed. *See* 37 C.F.R. § 41.50(a)(1).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

msc

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